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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,329	07/14/2003	Stanley W. Stephenson	85854CPK	6668

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EXAMINER

BASHORE, ALAIN L

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,329

Applicant(s)

STEPHENSON ET AL.

Examiner

Alain L. Bashore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-27, drawn to process, classified in class 427, subclass 162.

II. Claims 28-30, drawn to product, classified in class 349, subclass 21.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case that the process as claimed can be used to make another and materially different product such as one without a patterned first conductor layer comprising second optionally transparent conductors.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Ms. Blank a provisional election was made with traverse to prosecute the invention of group I, claims 1-27.. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

4. A two page cover sheet filed 7-14-03 does not include the within mentioned "enclosed PTO form 1449".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 5, 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, there is mentioned "useful for displays" and "effective amount", both of which are vague and indefinite because they are relative concepts.

In claim 5, the recitation "and combinations thereof" is vague and indefinite.

In claim 25, the term ITO as an abbreviation is indefinite.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2, 4, 16-17, 19-24, 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844).

Churchill ('060) discloses a method of making a sheet comprising a polymer-dispersed cholesteric liquid crystals including: providing an emulsion of cholesteric liquid-crystal dispersed in a solution comprising gelatin, coating the emulsion over a substrate, and drying the emulsion to form at least one electro-optical imaging layer comprising polymer-dispersed liquid crystal domains dispersed in a matrix comprising hardened gelatin (col 4, lines 33-70).

Churchill ('060) does not disclose a hardening agent for the gelatin.

Churchill ('844) discloses a hardening agent for the gelatin (col 13, lines 71-72).

It would have been obvious to one with ordinary skill in the art to include a hardening agent for the gelatin because both Churchill ('060) and Churchill ('844) teach hardening gelatin for an emulsion of cholesteric liquid-crystal.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of Hodson.

Churchill ('060) and Churchill ('844) do not disclose a substrate as polyester material.

Hodson discloses polyester material as a top layer (col 4, lines 17-33).

It would have been obvious to one with ordinary skill in the art to include a substrate as polyester material because Hodson teaches suitability of such a material (col 4, lines 6-16).

10. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of El-Hafidi et al.

Churchill ('060) and Churchill ('844) do not disclose a hardening agent as an active olefin.

El-Hafidi et al discloses a hardening agent as an active olefin (para 0113).

It would have been obvious to one with ordinary skill in the art to include a hardening agent as an active olefin because El Hafidi et la teaches hardening agents.

11. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of Van den Zegel et al.

Churchill ('060) and Churchill ('844) do not disclose a hardening agent as a vinyl sulfone compound as further recited by applicant in claims 8-11.

Van den Zegel et al discloses a hardening agent as vinyl sulfone compound further as recited by applicant in claims 8-11 (col 7, lines 5-23).

It would have been obvious to one with ordinary skill in the art to include a hardening agent as a vinyl sulfone compound as further recited by applicant in claims 8-11 because Van den Zegel et al teaches gelatin hardening.

12. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of Strathearn et al.

Churchill ('060) and Churchill ('844) do not disclose stream mixing as claimed by applicant in claims 12-15.

Strathearn et al discloses stream mixing as claimed by applicant in claims 12-15 (col 1, lines 36-38).

It would have been obvious to one with ordinary skill in the art to include disclose stream mixing as claimed by applicant in claims 12-15 because Strathearn et al teaches mixing problems (col 1, lines 10-35).

13. Claim 18 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of Clikeman et al.

Churchill ('060) and Churchill ('844) do not disclose a surfactant, biocide, and where the emulsion is coated over patterned ITO conductors in step b.

Clikeman et al discloses a surfactant (col 11, lines 18-36), biocide (col 1, lines 43-45), and where the emulsion is coated over patterned ITO conductors (col 20, lines 9-16).

It would have been obvious to one with ordinary skill in the art to include a surfactant and biocide in the emulsion because Clikeman teaches each as may be added to an emulsion of the type used by the Churchill references, and specifically Clikeman et al teaches advantages for use of surfactants (col 11, lines 18-36).

It would have been obvious to one with ordinary skill in the art to include the emulsion is coated over patterned ITO conductors in step b because Clikeman et al teaches that such applications are known in the art (col 19, lines 44-52).

14. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill ('060) in view of Churchill ('844) as applied to claims above, and further in view of Ferguson ('423).

Churchill ('060) and Churchill ('844) do not disclose second conductors formed, using printed inks, over the dried coating.

Ferguson ('423) discloses conductors formed using printed inks (col 7, lines 54-61).

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It would have been obvious to one with ordinary skill in the art to include after step (c) second conductors formed, using printed inks, over the dried coating because Ferguson ('423) teaches devices useable for an electrode using the invention (col 7, lines 7-22, 48-66).

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).


16. Claim 1 and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,423,368. Although the conflicting claims are not identical, they are not patentably distinct from each other because recitations such as "uniformity" is well known in the art.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 571-272-6739. The examiner can normally be reached on about 7:30 am to 5:00 pm (Mon. thru Thurs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Alain L. Bashore
Primary Examiner
Art Unit 1762